

## § 601.5

under section 552 of title 5 U.S.C. (Freedom of Information Act) when the proposed denial is based on their continued classification under Executive Order 12958.

[47 FR 57284, Dec. 23, 1983, as amended at 61 FR 51021, Sept. 30, 1996]

### § 601.5 Derivative classification.

Distinct from “original” classification is the determination that information is in substance the same as information currently classified, because of incorporating, paraphrasing, restating or generating in new form information that is already classified, and marking the newly developed material consistent with the marking of the source information. Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

(a) If a person who applies derivative classification markings believes that the paraphrasing, restating, or summarizing of classified information has changed the level of or removed the basis for classification, that person must consult for a determination an appropriate official of the originating agency or office of origin who has the authority to upgrade, downgrade, or declassify the information.

(b) The person who applies derivative classification markings shall observe and respect original classification decisions; and carry forward to any newly created documents any assigned authorized date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

### § 601.6 Downgrading and declassification.

Executive Order 12958 prescribes a uniform system for classifying, declassifying, and safeguarding national security information.

(a) Information shall be declassified or downgraded as soon as national security considerations permit. The National Science Foundation shall coordinate their review of classified information with other agencies that have a di-

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rect interests in the subject matter. Information that continues to meet the classification requirements prescribed by Section 1.3 despite the passage of time will continue to be protected in accordance with Executive Order 12958.

(b) Foundation documents may be declassified or downgraded by the official who authorized the original classification, if that official is still serving in the same position; the originator’s successor; a supervisory official of either; or officials delegated such authority in writing by the Director.

(c) The Director shall conduct internal systematic review programs for classified information originated by the Foundation contained in records determined by the Archivist to be permanently valuable but that have not been accessioned into the National Archives of the United States.

(d) The Archivist of the United States shall, in accordance with procedures and timeframes prescribed in the Information Security Oversight Office’s directives implementing Executive Order 12958, systematically review for declassification or downgrading, classified records accessioned into the National Archives of the United States. Such information shall be reviewed by the Archivist for declassification or downgrading in accordance with systematic review guidelines that shall be provided by the head of the agency that originated the information, or in the case of foreign government information, by the Director of Information Security Oversight Office in consultation with interested agency heads.

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### § 601.7 Mandatory declassification review.

(a) The Division of Administrative Services is hereby designated as the office to which members of the public or Departments may direct requests for mandatory review for declassification under this provision. In the case of documents originally classified by the Foundation, this office shall, in turn, assign the request to the appropriate office for action within 60 days. In each instance, receipt of the request will be acknowledged in writing immediately

by the office that has been assigned action. A request for classification review must reasonably describe the document.

(b) Whenever a request is deficient in its description of the record sought, the requester should be asked to provide additional identifying information to the extent possible. Whenever a request does not reasonably describe the information sought, the requester shall be notified that unless additional information is provided or the scope of the request is narrowed, no further action will be undertaken. Upon a determination that the requested material no longer warrants classification, it shall be declassified and made promptly available to the requester, if not otherwise exempt from disclosure under 5 U.S.C. 552(b) (Freedom of Information Act) or other provision of law. If the information may not be released in whole or in part the requester shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination of the Classification Review Committee, and a notice that such an appeal must be filed with the Foundation within 60 days in order to be considered.

(c) When the request relates to a document given derivative classification by the Foundation or originated by another agency, the request and the document will be forwarded to the originator of the source document, and the requestor notified of such referral.

(d) Employees presently cleared for access to classified information are encouraged to challenge classification in cases where there is reasonable cause to believe that information is classified unnecessarily, improperly, or for an inappropriate period of time. Such challenges should be brought to the attention of the Security Officer (Information) who will act thereon within 30 days, informing the challenger of actions taken. Requests for confidentiality will be honored.

#### **§ 601.8 Access to classified materials.**

No person may be given access to classified information unless that person has been determined to be trustworthy and unless access is essential to the accomplishment of lawful and authorized Government purposes.

#### **§ 601.9 Access by historical researchers and former Presidential appointees.**

The requirement in § 601.8 that access to classified information may be granted only as is essential to the accomplishment of lawful and authorized Government purposes may be waived for persons who are engaged in historical research projects, or previously have occupied policymaking positions to which they were appointed by the President, provided they execute written agreements to safeguard the information and written consent to the Foundation's review of their notes and manuscripts solely for the purpose of determining that no classified information is disclosed. A precondition to any such access is the favorable completion of an appropriate investigative inquiry.

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